IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.996 OF 2005

IN

PAUPER PETITION NO.11 OF 1997

IN

SUIT NO.3299 OF 2003

Haji Ismail Haji Habib Musafirkhana Trust, & Ors. ...Plaintiffs/ Petitioners

Versus

Mr.Yusuf Saleh Mohammad Jafrani & Ors. ...Defendants

.....

Mr.R.V.Govilkar for Plaintiffs.

Mr.Khan Javed Akhtar, Advocate present on notice.

Mr.D.R.Dhurat, Ist Asstt. to Court Receiver.

Mr.Muktadir Hasnain Khan Chaudhari present in-person.

.....

CORAM: A.M.KHANWILKAR, J.

OCTOBER 4, 2005.

P.C.

1. Heard Mr.Govilkar for Plaintiffs. With his assistance, I have gone through the record.

Intriguing situation has been noticed in the present proceedings. This Chamber Summons has been filed by Defendant No.21 Chaudhari Mohammed Hasnain Khan. Affidavit in support of the Chamber Summons as filed is of Amjad Chaudhari Mohammed Hasnain Khan. The deponent has been identified by Mr.Khan Javed Akhtar, Advocate for Defendant No.21. After this Chamber Summons was moved, Plaintiff No.4 filed reply affidavit, inter alia, pointing out that the signature of Defendant No.21 [read 21(a)] is forged, inasmuch as said party is not residing in Mumbai, but has been staying abroad since long. In other words, the presence of Defendant No.21 [21(a)] for filing affidavit in support of this Chamber Summons, which is purportedly sworn on 2nd August 2005 is in doubt. As this reply was filed, the Advocate Mr.Khan Javed Akhtar filed affidavit explaining the circumstances in which he identified the person as Amjad Khan when the affidavit was sworn before the Chief Translator and Interpreter, High Court, Bombay on 2nd August 2005 and he had identified him as the deponent. In this affidavit, the Advocate Mr.Khan Javed Akhtar has deposed that one Muktadir Hasnain Khan Chaudhari represented

himself as Amjad Khan, who is Defendant No.21 in the present proceedings and informed that he has received notice from the Court Receiver that the Court Receiver was to take possession on 1st August 2005 of the disputed premises at 11.00 a.m. It is further stated in this affidavit that on the basis of such representation made by Muktadir Hasnain Khan Chaudhari, he urgently prepared Chamber Summons and affidavit in support of the said Defendant No.21 and mentioned the matter before the Court on 2nd August 2005 at 11.00 a.m. It is then stated that after the affidavit of Plaintiff No.4 was filed on record, he in turn, immediately contacted the said Muktadir Hasnain Khan Chaudhari on telephone and called upon him to disclose the correct position. On that request, it is stated that Muktadir Hasnain Khan informed him that Defendant No.21 Amjad Chaudhari Mohammed Hasnain Khan is presently working and residing at Kuwait. Immediately thereafter, Advocate Mr.Khan Javed Akhtar by letter dated 10th August 2005 informed Mr.Muktadir Hasnain Khan Chaudhari that he was withdrawing his appearance from the proceedings and formal request will be made to the Court in that

behalf and to make necessary arrangements as may be advised. Thereafter, Advocate Mr.Khan Javed Akhtar moved formal application for discharge for the reasons mentioned in the affidavit, which was granted on 16th September 2005 by the Additional Prothonotary and Senior Master. No other arrangement has been made on behalf of Defendant No.21 since then. Besides, stating above position on affidavit, Advocate Mr.Khan Javed Akhtar Chaudhari has placed on record joint affidavit filed by Muktadir Hasnain Khan Chaudhari and Mrs.Tabassum Imtiyaz Shaikh dated August 10, 2005. In the said affidavit, said deponents have stated that after they had received notice from the Court Receiver, they approached one Mr.Haroon Shoeb Noorani, one of the trustees of the Plaintiff Trust. He in turn, advised them that since Defendant No.21 was at Kuwait and cannot come to Mumbai to file affidavit, Muktadir Hasnain Khan Chaudhari should represent himself as Defendant No.21 and instruct his Advocate to prepare affidavit and file necessary proceedings in Court. Acting on the said advise, it is stated that the said Muktadir Hasnain Khan Chaudhari contacted

Advocate Mr.Khan Javed Akhtar, consequent to which, the present Chamber Summons came to be filed.

2. From the substance of the pleadings filed before this Court, it is amply clear, rather conceded that Muktadir Hasnain Khan Chaudhari misrepresented himself as Amjad Chaudhari Mohammed Hasnain Khan as Defendant No.21 [21(a)] and requested Mr.Khan Javed Akhtar, Advocate to take out the present proceedings. Besides, he has signed the affidavit as Amjad Chaudhari Mohammed Hasnain Khan Defendant No.21. This is a clear case which attracts provisions of Chapter XI of the Indian Penal Code, inter alia, offence under Section 205 of the Indian Penal Code. That document of affidavit is prepared by impersonation and such document is used in the proceedings before this Court knowing it to be false and fabricated. This is a serious matter.

3. Besides, the proceedings filed by Muktadir Hasnain Khan Chaudhari representing himself to be Amjad Chaudhari Mohammed Hasnain Khan Defendant No.21, it is seen that undertaking has been filed

on behalf of Defendant No.21 dated 10th September 2004, which is signed as Amjad Chaudhari Mohammed Hasnain Khan. The Advocate Zahara Tejani appears to have identified the said Defendant who has given the affidavit of undertaking. It is not in dispute and even Muktadir Hasnain Khan Chaudhari concedes that Defendant No.21 Amjad Chaudhari Mohammed Hasnain Khan is staying abroad since August 2003 and has not visited India since then. If it is so, even the affidavit of undertaking sworn on 10th September 2004 is a case of impersonation. Moreover, that affidavit of undertaking has been used in the proceedings before this Court.

4. As the abovesaid documents have been fabricated and used in the proceedings before this Court, I think it appropriate to direct the Registrar (Original Side)/Prothonotary and Senior Master, to register complaint against Mr.Muktadir Hasnain Khan Chaudhari, resident of 33, Husaniya Marg, 1st floor, Room No.20, Mumbai - 400 003 for offence punishable under Chapter XI of the Indian Penal Code. This order is passed in terms of provisions of Section 195 of the Code of Criminal

Procedure.

5. Mr.Muktadir Hasnain Khan Chaudhari was given notice about the proposed action vide order dated 3rd October 2005. He waived notice by appearing in Court and stated that he would like to address the Court himself on the basis of affidavit already filed which was on record dated 10th August 2005. He has mentioned his other residential address as Village Tayala, Post Hapur, District Gaziabaad, Uttar Pradesh, C/o. his father Chaudhari Mohammed Hasnain Khan. (The complaint to be filed shall mention both the addresses of Muktadir Hasnain Khan Chaudhari as furnished by him). In the affidavit dated 10th August 2005, the explanation offered is that he acted on the advise of one Mr.Haroon Shoeb Noorani. Whether that plea is acceptable, is a matter for trial in the prosecution against Muktadir Hasnain Khan Chaudhari. That question will have to be resolved in the said proceedings. If it is found that Haroon Shoeb Noorani was responsible for the advise given to the said Muktadir Hasnain Khan Chaudhari then it will be open to the Trial Court to also

proceed against said Haroon Shoeb Noorani for appropriate offence as may be permissible by law on the basis of evidence, which will come on record.

6. Insofar as the reliefs claimed in the Chamber Summons are concerned, having regard to the peculiar facts of the present case, I see no reason

to entertain the application. For, the affidavit in support of the Chamber Summons is by an incompetent person and a clear case of fraud committed on this Court. The Chamber Summons is dismissed on this count. Irrespective of rejection of this Chamber Summons and the above direction under Section 195 of the Code, it will be open to the Plaintiffs to take recourse to such other remedy as may be permissible by law.

7. Registrar (Original Side)/ Prothonotary and Senior Master to take immediate steps to register complaint on the basis of directions given above, preferably within two weeks from today.

A.M.KHANWILKAR, J.